

**STATE OF INDIANA  
DEPARTMENT OF STATE REVENUE**

**IN REGARDS TO THE MATTER OF:**

**MS. BESSIE P. CLARK  
DOCKET NO. 29-2002-0181**

**PROPOSED ORDER**

The Criminal Investigation Division of the Indiana Department of Revenue conducted an investigation of the Boys and Girls Club of Indianapolis. As a result of the investigation, on March 27, 2002, the Petitioner was prohibited from having any involvement with charity gaming in Indiana for a period of ten (10) years. The Petitioner, Bessie P. Clark, was represented by Fred D. Scott, Counselor at Law, 55 Monument Circle, Indianapolis, Indiana 46204. Attorney Steve Carpenter, appeared on behalf of the Indiana Department of State Revenue.

**FINDINGS OF FACTS**

- 1) Petitioner protested the Department's proposed actions on April 1, 2002.
- 2) The Department acknowledged, by certified mail return receipt requested, the Petitioner's appeal in a letter dated April 2, 2002.
- 3) The Department contacted the Petitioner a second time regarding setting a hearing on May 10, 2002.
- 4) Petitioner's hearing set for July 25, 2002 was continued.
- 5) The Department on December 30, 2002 contacted the Petitioner again in regards to setting a hearing date and time.
- 6) On January 9, 2003 Petitioner's counsel advised the Department that his client wishes to continue her appeal.
- 7) On January 25, 2003 the Petitioner's hearing was set for February 19, 2003.
- 8) Once again the Petitioner's hearing was postponed.
- 9) The Department sent Petitioner a letter dated May 21, 2003 regarding the legislative changes that directly affected the procedures governing the administrative hearing.
- 10) Pursuant to IC 4-21.5-3-1, notice was given to Petitioner's counsel on September 4, 2003 regarding a possible dismissal of her appeal if no response was received by the Department on or before November 7, 2003.
- 11) Petitioner's counsel has repeatedly failed to respond to the Department's correspondence.

**STATEMENT OF LAW**

- 1) IC 4-21.5-3-24 states, "(a) At any stage of a proceeding, if a party fails to:  
(1) file a responsive pleading required by statute or rule;

(2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or

(3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action; the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 of this chapter to resolve any issue of fact.

### **CONCLUSIONS OF LAW**

- 1) IC 4-21.5-3-24 states, “(a) At any stage of a proceeding, if a party fails to: (1) file a responsive pleading required by statute or rule; (2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or (3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action; the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.
- 2) The Petitioner’s failure to respond to the Department’s numerous letters is grounds for a proposed dismissal order pursuant to IC 4-21.5-3-24.

### **PROPOSED ORDER**

The Administrative Law Judge orders the following:

Petitioner’s appeal is dismissed pursuant to IC 4-21.5-3-24.

- 1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
- 2) Judicial review of a final order may be sought under IC 4-21.5-5.

**THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.**

Dated: November 17, 2003 \_\_\_\_\_  
Bruce R. Kolb / Administrative Law Judge